

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VERITAS INSTITUTE,)
Petitioner,)
v.)
UNITED STATES OF AMERICA et al.,)
Defendants.)

)

3:12-cv-298-RCJ-VPC

ORDER

Currently before the Court are a Verified Petition by Affidavit with Memorandum in Support to Quash IRS Form 2039 Administrative Summons (#1), a Motion to Dismiss or Summarily Deny Verified Petition (#3), and a Motion for an Extension of Time or in the Alternative Motion to Strike Response (#4).

BACKGROUND

I. Petition to Quash

On June 4, 2012, Joan Buglino Lewis (“Joan”), *pro se* on behalf of Veritas Institute and as “a sentient being appointed Overseer of Veritas Institute, a corporation sole,” filed a petition to quash an Internal Revenue Service (“IRS”) administrative summons against Respondents United States of America, Internal Revenue Service, and G. Yarbrough.¹ (Pet. to Quash (#1) at 1). Joan stated that she was authorized as a non-lawyer to act as attorney-in-fact for the Veritas Institute because she represented the interests of the corporation. (*Id.* at 1-2). Joan stated that Veritas Institute could be represented by a non-lawyer overseer because a non-

¹ An action to quash an IRS summons is a suit against the United States. *Barmes v. United States*, 199 F.3d 386, 388 (7th Cir. 1999). As such, the United States is the only proper respondent in this case.

1 lawyer officer could prepare legal documents. (*Id.* at 2).

2 The petition alleged the following facts. (*Id.* at 3). IRS Officer G. Yarbrough initiated
 3 an investigation into the tax liabilities of LeRoy Albert Lewis of Grass Valley, California for tax
 4 years ending 1998, 1999, 2007, and 2010. (*Id.*). Yarbrough made a “legal determination
 5 without any authority whatsoever, deeming Veritas Institute as the alter-ego, nominee and/or
 6 transferee of LeRoy Albert Lewis and Joan B. Lewis.” (*Id.*). Yarbrough sent an IRS Form
 7 2039 Administrative Summons to the Custodian of Records at Wells Fargo Bank in
 8 Philadelphia, Pennsylvania, to appear before Yarbrough on June 1, 2012 at 10:00 a.m. in San
 9 Jose, California. (*Id.*). The summons asked the custodian of records to provide testimony and
 10 “to bring and produce for examination certain books, records, papers, and other data allegedly
 11 relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into
 12 any offense connected with the administration or enforcement of the internal revenue laws
 13 concerning Veritas Institute.” (*Id.*). Joan argued that the summons was a “bootleg request”
 14 which could be ignored because it lacked a valid OMB control number and expiration date.
 15 (*Id.*). Joan argued that, she as a representative of Veritas Institute, had the right to seek to
 16 quash the summons pursuant to 26 U.S.C. § 7609(b)(2). (*Id.* at 4). Joan sought to quash the
 17 administrative summons sent to Wells Fargo and sought to enjoin Wells Fargo from
 18 responding to the summons. (*Id.* at 6, 49).

19 **II. Summons Facts²**

20 The declaration of Gregory Yarbrough, an IRS Revenue Officer in San Jose, California,
 21 declared the following. (Yarbrough Decl. (#3-1) at 1). He was authorized to issue
 22 administrative summonses. (*Id.*). As a Revenue Officer, he was assigned to collect the
 23 outstanding federal income tax liabilities (Form 1040) owed by LeRoy Albert Lewis (“LeRoy”)
 24 and Joan for the 1998, 1999, 2001, 2002 tax years and LeRoy for 2007 and 2010 tax years.
 25 (*Id.* at 2). Between 1998 and 2003, LeRoy conducted an oral surgery practice from which he
 26 reported some income to the IRS. (*Id.*). In May 2007, LeRoy pled guilty to conspiracy to

28 ² The United States attached exhibits to its motion to dismiss the petition. (See Exhibits (#3-1, 3-2, 3-3, 3-4, 3-5)).

1 defraud the United States in connection with a scheme promoted by Tower Executive
 2 Resources to inflate his medical expenses and hide income in offshore accounts. (*Id.*). In the
 3 course of Yarbrough's collection efforts, he determined that LeRoy and his wife, Joan, owned
 4 a parcel of real property located at 491 Montcrest Place, Danville, California, in Contra Costa
 5 County (the "Danville Property"). (*Id.*). In July 2002, LeRoy and Joan executed a quit claim
 6 deed purporting to transfer the Danville Property to the Diablo Vista Trust for no consideration,
 7 naming PATRA Services as trustee, and stating that the transfer to the trust was for the benefit
 8 of the grantor, i.e. LeRoy and Joan. (*Id.* at 2-3). On October 12, 2005, an authorized delegate
 9 for the Secretary of Treasury filed a Notice of Federal Tax Lien with the County Recorder for
 10 Contra Costa County, California, which named Diablo Vista Trust as a nominee for LeRoy and
 11 Joan. (*Id.* at 3). Notwithstanding the lien, on October 31, 2005, Diablo Vista Trust executed
 12 a quit claim deed purporting to transfer the Danville Property to "the Office of Overseer of
 13 Veritas Institute and his successors." (*Id.*). On November 15, 2005, Diablo Vista Trust
 14 executed a grant deed transferring the Danville Property to "the Veritas Institute and his
 15 successors." (*Id.*). On January 24, 2007, PATRA Services, as trustee of Diablo Vista Trust,
 16 executed another deed to correct the transfer to the Veritas Institute. (*Id.*). No consideration
 17 was recited for any of these transfers. (*Id.*).

18 Yarbrough declared the following. (*Id.*). On August 3, 2007, Veritas Institute sold the
 19 Danville Property to Joffrey and Paula Pryor for over \$2 million. (*Id.* at 3, 5). Joan signed the
 20 grant deed on behalf of Veritas Institute with her title identified as "Scribe." (*Id.* at 3). In
 21 September 2007, Veritas Institute purchased a single family residence located at 105 Prickly
 22 Pear Road, Verdi, Nevada 89439 (the "Verdi Property"). (*Id.*). The documents filed with the
 23 Nevada Secretary of State list Joan as the only officer of the Veritas Institute. (*Id.*). The
 24 Veritas Institute's address is the Verdi Property. (*Id.*).

25 Yarbrough had repeatedly requested that LeRoy disclose information about various
 26 entities involved in these transfers, including the Veritas Institute, but LeRoy failed to note any
 27 information for his wife or Veritas Institute. (*Id.* at 3-4). Yarbrough issued a summons to Wells
 28 Fargo Bank, N.A. on May 15, 2012. (*Id.* at 4). The summons directed Wells Fargo to produce,

1 in person on June 1, 2012 at 10:00 a.m., account information for any bank accounts at Wells
2 Fargo for LeRoy and Joan, including accounts for which they had signature authority, and of
3 the Veritas Institute, which acquired the Danville Property either directly or indirectly from
4 LeRoy and Joan. (*Id.*). Wells Fargo has not complied with the summons and is awaiting the
5 resolution of the motion to quash. (*Id.*).

6 The summons stated that it was in regard to the matter of LeRoy A. Lewis and Joan B.
7 Lewis and that the summoned party was the Custodian of Records, Wells Fargo Bank, N.A.
8 (Summons (#3-4) at 2). The summons stated that under IRC § 7609(c)(2)(D), the summons
9 was exempt from the notice requirements pertaining to third party summonses. (*Id.*).

10 The pending motions now follow.

11 DISCUSSION

12 The United States moves to dismiss or summarily deny the verified petition on four
13 grounds. (Mot. to Dismiss (#3) at 2). First, the United States moves to dismiss the action
14 because a non-lawyer may not represent a corporation under the local rules and Ninth Circuit
15 precedent. (*Id.* at 5). Second, the United States argues that this Court lacks subject-matter
16 jurisdiction over the petition to quash because the Veritas Institute was not “entitled to receive
17 notice” of the IRS summons pursuant to 26 U.S.C. § 7609(b)(2). (*Id.* at 5-6). Third, the United
18 States asserts that the Veritas Institute lacks standing to bring an action under 26 U.S.C.
19 § 7609(b). (*Id.* at 8-9). Fourth, the United States contends that, even if this Court had
20 jurisdiction, it established a *prima facie* case under *United States v. Powell*, 379 U.S. 48, 85
21 S. Ct. 248, 13 L. Ed. 2d 112 (1964). (*Id.* at 9).

22 In response, Joan asserts that she is authorized to act as attorney-in-fact for Veritas
23 Institute and can represent Veritas Institute as its non-lawyer overseer. (Resp. to Mot. to
24 Dismiss (#6) at 1-2). Joan argues that the IRS has no legal authority to summons any third
25 parties in connection with the enforcement or collection of income taxes. (*Id.* at 3).

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1 The United States filed a reply. (Reply to Mot. to Dismiss (#8)).³

2 The Court dismisses this case, without prejudice, because Veritas Institute, a
3 corporation, is represented by a non-attorney. The Ninth Circuit has held that a “corporation
4 may appear in federal court only through licensed counsel.” *United States v. High Country
5 Broad. Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993). Rule 9010 of the Nevada Local Rules
6 provides that “[a]ny corporation, partnership, or other business entity, except when acting as
7 a bankruptcy trustee for a corporation or partnership, must be represented by an attorney.”
8 Nev. Loc. R. 9010. Joan is not a licensed attorney and, therefore, cannot represent Veritas
9 Institute in federal court. Upon acquiring a licensed attorney to represent it, Veritas Institute
10 may file another complaint in federal court.

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24 ³ Joan filed a Motion for an Extension of Time to File Reply or in the Alternative to
25 Strike Plaintiff’s Response. (Mot. for Extension of Time (#4) at 1). Joan sought an extension
26 until September 17, 2012, to file a reply. (*Id.* at 3). That time has passed and Joan has not
filed any reply in the docket. Moreover, the Court notes that Joan’s request is actually a
request to file a sur-reply to the motion to dismiss. The Court denies this request.

27 Joan also moved to strike the Motion to Dismiss because the motion contained an
incorrect caption to the Eastern District of California and incorrect judge’s initials on the case
28 number. (Mot. for Extension (#4) at 3). The Court denies the motion to strike because the
United States filed another copy of the motion to dismiss with the corrected caption and case
number. (See Notice of Corrected Filing (#5)).

CONCLUSION

For the foregoing reasons, IT IS ORDERED that the Verified Petition to Quash IRS Form 2039 Administrative Summons (#1) is DISMISSED, without prejudice, because Petitioner Veritas Institute is represented by a non-attorney.

IT IS FURTHER ORDERED that the United States's Motion to Dismiss or Summarily Deny Verified Petition (#3) is GRANTED.

IT IS FURTHER ORDERED that the Motion for an Extension of Time to File Reply or in the Alternative to Strike Response (#4) is DENIED.

The Clerk of the Court shall enter judgment accordingly.

DATED: This 27th day of February, 2013.

United States District Judge